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**MAR 14 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**JOEL HERNANDEZ-HERNANDEZ;  
JACINTA CORTES-SERNAS,**

**Petitioners,**

**v.**

**ALBERTO R. GONZALES, Attorney  
General,**

**Respondent.**

No. 03-73855

Agency Nos. A76-367-939  
A76-367-938

**MEMORANDUM**\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 8, 2006\*\*

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Joel Hernandez-Hernandez and his wife, Jacinta Cortes-Sernas, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider the BIA's decision denying their

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

motion to reopen removal proceedings based on new evidence. We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Mohammad v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Petitioners' motion to reconsider because Petitioners did not demonstrate legal or factual error in the BIA's denial of their motion to reopen. *See* 8 C.F.R. § 1003.2(b)(1). The BIA properly rejected Petitioners' contention that it failed to consider all the evidence they presented with their motion to reopen. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (holding that absent evidence to the contrary, the BIA is presumed to have considered all the evidence).

We lack jurisdiction to consider Petitioners' contention that Cortes-Sernas has an approved visa petition, because Petitioners failed to raise this issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir.2004).

We deny Petitioners' request to stay voluntary departure, because it was filed after the expiration of the voluntary departure period. *See Garcia v. Ashcroft*, 368 F.3d 1157, 1159–60 (9th Cir. 2004) (order).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**